

CLAUSE H-8 – BUY AMERICAN ACT - CONSTRUCTION MATERIALS (August 2002)

(a) Definitions. As used in this clause –

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or a lower-tier subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by SURA are supplies, not construction material.

"Cost of components" means –

- (1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means –

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Subcontractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to the construction material or components listed by the Government as follows:

NONE

[Contracting Officer to list applicable excepted materials or indicate "none"]

- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

- (1) (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including –
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;

- (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Subcontractor request for a determination submitted after contract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Subcontractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (1) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Subcontractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
 - (2) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

| Foreign and Domestic Construction Materials Price Comparison | | | | |
|---|-----------------|----------|------------------|--|
| Construction Material Description | Unit of Measure | Quantity | Price (Dollars)* | |
| <i>Item 1:</i> | | | | |
| Foreign construction material | | | | |
| Domestic construction material | | | | |
| | | | | |
| <i>Item 2:</i> | | | | |
| Foreign construction material | | | | |
| Domestic Construction material | | | | |
| <p>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</p> <p>[Include other applicable supporting information.]</p> <p>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]</p> | | | | |